gussets and also above the top edges of the gussets. The top edges of the gussets are folded inwardly and downwardly along a slanted folding line and the inner layer of the folded area is fused to itself as shown in Fig. 5 at 16. The outer side is sealed to the neighboring bag wall with second welding seam and the inner side of the film is sealed to a wall along third welding seam (17). The welding seams form a fused connection that includes the top edges so that the top edges are closed. The end areas are folded toward the rear wall and a closure device is being provided in the form of reclosable closure device 7 that extends above the folded over areas across the entire bag width.

Examiner states that *Totani* does not expressly disclose the top edges extending toward the bottom at a second slant inwardly and downwardly. Examiner refers to *U.S. 2001/0051008 (Wedi 008)* as showing a sealed gusset with a double slant as claimed. A complete seal 18 is shown of the gusset end portion and this provides a larger expandable space due to less material being folded over. According to examiner it would have been obvious to a person skilled in the art to fold and seal the gussets and end portions of *Totani* in the way proposed by *Wedi 008* in order to simplify manufacture, completely seal the gusset end portions, and provide a larger expandable space. In examiner's opinion it would also be obvious as a matter of design choice to shape the folded end to whatever form or shape desired.

Examiner further points out that the modification as proposed results in the elimination of the claimed third welding seam that attaches the inner layer to the back wall neighboring the location of the folded gusset ends by moving notch 17 (has become unnecessary due to the seal provided by *Wedi 008)* out of the side seal area.

Examiner refers to *Wedi 837* as teaching sealing of the ends of the gusset portion with welding seams that extend beyond the top of the gusset ends connecting the neighboring layers as well, substantially as claimed in connection with the third welding seam with the exception that this is not done on a folded over gusset portion. Examiner notes that extending the seal improves the sealing characteristics.

In examiner's view, it would therefore have been obvious to extend the gusset end seal 18 of the combination *Totani / Wedi 008* beyond the gusset end edges as shown in *Wedi 837* to close the ends of the gusset portions and attach them to neighboring layers

(paragraph 0016 of *Wedi 837*). In examiner's opinion, it would have been obvious to substitute the larger seal of *Wedi 837* for the seal of *Wedi 008* for achieving the predictable result of sealing the gusset end and improving sealing action.

Applicant herewith submits a declaration pursuant to 37 CFR 1.132 of Mr. Johannes Wedi, co-inventor of the two US patent applications 2003/0210837 and 2001/0051008 and employed for more than 20 years at Bischof + Klein GmbH & Co. KG, the assignee of the instant application. In his declaration Mr. Wedi points out the difficulties encountered in manufacturing gusseted bags and the practical aspects standing in the way of apparently simple solutions and of combining apparently easily adaptable elements.

Applicant would further like to emphasize that *Totani* does not show that the top edges of the gussets are closed. As already explained in the attached declaration of Mr. Wedi, the top edges of the gussets are open toward the exterior and not fused. The top edges (Fig. 7 at 15 shows that the two layers of material are slightly gaping) are NOT SEALED when the sealing seam 6 is applied (only the area at 17 is sealed).

It is also respectfully submitted that *Totani* discloses, aside from the folded arrangement of Figs. 3 and 4 at a 45 degree angle, oblique top edges and folding angles (Figs. 6, 7, 8; paragraph 0038) but the teaching is that the top edges must be positioned along outer edge 5 for common sealing by the seam 6.

The seal of *Wedi 008* - as set forth in the attached declaration by Mr. Wedi - is problematic when the material of the gussets is fusible only on one face, as is the case in *Totani*. When looking at Figs. 3 and 4 of *Totani*, the outer surfaces of the gusset 1 shown in the Figs. 3 and 4 are sealable but the inwardly folded faces that contact each other are not sealable; see paragraph 0036:

> "Each of the side gussets 1 has outer surfaces formed by the sealant and inner surfaces formed by the base material when being folded into halves. The triangular flap 13 has therefore outer surfaces formed by the sealant and inner surfaces formed by the base material."

This means that when using the fold arrangement of *Wedi 008* a seal such as 18 in *Wedi 008* cannot be properly formed (note the explanations provided by Mr Wedi in the attached declaration). A person of skill in the art would therefore not consider the teachings of *Wedi 008* in place of the folded arrangement of *Totani et al.*

Also, it should be noted that in *Wedi* 008, the upper ends of the gussets are not welded or fused to one of the bag walls. As set forth in paragraph 0005:

> "According to the invention, this objective is accomplished in that the upper ends of the side gussets are closed by being welded together to themselves and underneath the reclosable device reach freely into the inner space of the bag."

When applying the teaching of *Wedi 008,* the upper folded-over ends of the gussets would not be attached to any of the bag walls; note that in *Totani* the gussets are attached only by means of the seams 6 to the bag walls and such an attachment would no longer exist if the folded gussets of *Wedi 008* are used. *Wedi 008* shows no areal attachment to the bag walls.

When the folded gusset of *Wedi 008* is used in place of the folded-over gusset end of *Totani*, then the feature of claim 11 relating to the second welding seam requiring that the outer side of the folded over end areas in the area where the inner layer is facing the neighboring bag wall is areally fused to the bag wall is no longer fulfilled. There is no suggestion to attach the folded-over end area to the bag wall as *Wedi 008* teaches that the gusset ends reach freely into the inner space of the bag and that this is advantageous and desirable because there is no narrowing of the fill opening (see paragraph 0006 of *Wedi 008*).

Wedi 387 teaches that top edges of gussets are closed by a seam that is formed between the back wall 1a and the flap 9a that are fused to each other; the gusset ends of the gusset 3 are inserted between these two parts 1a, 9a and when the two parts are sealed the interposed upper edges are sealed, too. This is contrary to the teachings of *Wedi 008* where it is desired that the sealed gusset ends reach freely into the interior and are not attached to the bag walls so that a person of skill in the art would not apply the

teaching to the modified *Totani / Wedi 008* bag.

The claims 5 to 8 are therefore not obvious in view of the cited references.

Reconsideration and withdrawal of the rejection of the claims under 35 USC 103 are respectfully requested.

CONCLUSION

In view of the foregoing, it is submitted that this application is now in condition for allowance and such allowance is respectfully solicited.

Should the Examiner have any further objections or suggestions, the undersigned would appreciate a phone call or **e-mail** from the examiner to discuss appropriate amendments to place the application into condition for allowance.

Authorization is herewith given to charge any fees or any shortages in any fees required during prosecution of this application and not paid by other means to Patent and Trademark Office deposit account 50-1199.

Respectfully submitted on July 19, 2011,

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